WONG YUEN HOCK

v.

SYARIKAT HONG LEONG ASSURANCE SDN. BHD. & ANOTHER APPEAL

FEDERAL COURT, KUALA LUMPUR
TAN SRI DATO' HJ. MOHD AZMI BIN DATO' HJ. KAMARUDDIN FCJ
DATO' MOHD DZAIDDIN BIN HAJI ABDULLAH FCJ
DATO' SHAIK DAUD BIN HJ. MOHD ISMAIL JCA
[CIVIL APPEAL NOS. 02-525 & 02-533 OF 1993]
25 JULY 1995

INDUSTRIAL RELATIONS: *Workmen - Dismissal - Breach of natural justice by employer - Whether necessarily fatal - Whether defect curable by inquiry in Industrial Court.*

INDUSTRIAL RELATIONS: *Wrongful dismissal - Compensation in lieu of reinstatement - Misconduct by employee - Whether a relevant factor to determine quantum of compensation - Industrial Relations Act 1967 s. 30(5).*

INDUSTRIAL RELATIONS: *Industrial Court - Jurisdiction - Reference by Minister - Dismissal without just cause or excuse - Whether Court bound by terms of reference - Industrial Court refusing to go into merits of reference on ground that absence of domestic inquiry made dismissal ipso facto wrongful - Whether a jurisdictional error - Industrial Relations Act 1967 s. 20(3) - Employment Act 1955 s. 14(1)(a).*

INTERPRETATION: *Amending Acts - General words thereof - Whether capable of altering existing policy of the law in the same or other statutes - Amendments to s. 114(1) of Employment Act 1955 - Whether could change the function and jurisdiction of the Industrial Court under s. 20 Industrial Relations Act 1967 - Amending Acts A91/1971, A360/1976, A497/1980.*

The appellant, an insurance claims manager of the respondent, was dismissed from his employment on ground of gross dereliction of duty, in that he had improperly sold to himself two motor wrecks belonging to the respondent. The facts showed that the respondent had held no domestic inquiry prior to the dismissal.

Pursuant to a reference by the Minister made under s. 20(3) of the Industrial Relations Act 1967 (the Act) to determine the propriety of the dismissal, the Industrial Court ruled that the failure to hold an inquiry herein constituted a clear breach of natural justice that rendered the dismissal wrongful *ab initio*, and on that ground, deemed it unnecessary to examine the merits of the reference to ascertain whether the dismissal was or was not with just cause or excuse. The Court, however, took note of the appellant's misconduct and in the event awarded the appellant only limited compensation in lieu of reinstatement.

Both parties, dissatisfied with the award, applied to the High Court for *certiorari* to quash the same. The applications were dismissed by the learned Judge who ruled that the Industrial Court in the circumstances had not committed any jurisdictional error. The parties, hence, appealed further.

Held:

Mohd Azmi bin Hj. Kamaruddin FCJ (delivery the judgment of the Court):

[1] In assessing compensation in lieu of reinstatement it is proper for the Industrial Court to take into account any contributory misconduct on the part of the claimant. Such practice

is consistent with the provision of s. 30(5) of the Act which requires the Industrial Court to act according to good equity and conscience. The High Court was right in refusing the appellant's application to quash the award on reduced compensation.

[2] Once a case of wrongful dismissal has been properly referred by the Minister under s. 20(3), the Industrial Court is seised with jurisdiction and is obliged under the Act to determine the dispute on merits, unless the reference itself is *void ab initio*. The Industrial Court has no jurisdiction to change the scope of such reference. Thus even where there was a breach of contractual or statutory duty to hold an inquiry, the Industrial Court should proceed and determine, firstly, whether the misconduct complained of was in fact committed, and if so, whether it constitutes just cause or excuse for the dismissal.

[3] The Industrial Court, in inquiring into the question of whether there was a failure to hold a domestic inquiry, had gone into a reason not relied upon by the employer, and into a matter quite outside the reference by the Minister. The Industrial Court had thus changed the scope of the Minister's reference, committing thereby a jurisdictional error.

[4] The defect in natural justice by the respondent could and ought to be cured by the inquiry in the Industrial Court. The Industrial Court is an independent quasi-judicial statutory body capable of reaching fair result by fair method. Despite the initial defect by the respondent in dismissing the appellant, the hearing before the Industrial Court should be taken as sufficient opportunity for the appellant to being heard to satisfy natural justice and thereby rectify the omission to hold domestic inquiry. There is no ground for the Industrial Court to complain that for it to inquire into the merits of the question of just cause and excuse would be grossly unfair.

[5] The principle that an initial breach of natural justice by the employer could be cured by the Industrial Court applies to all cases irrespective of whether the claimant is or is not an employee within the meaning of the Employment Act. The right to due inquiry accorded to certain category of "employees" under s. 14(1) of the Employment Act does not alter the law affecting "workmen" under s. 20 of the Industrial Relations Act. That statutory requirement does not therefore excuse the Industrial Court from discharging its duty to enquire into the question of "just cause or excuse" as required by the said s. 20.

[Appellant's appeal dismissed. Respondent's appeal allowed but limited only to quashing that part of the award which held that the respondent's failure to hold an inquiry ipso facto rendered the appellant's dismissal without just cause and excuse]

[**Bahasa Malaysia** Translation of Headnotes]

PERHUBUNGAN PERUSAHAAN: *Pekerja - Pembuangan kerja - Perlanggaran keadilan asasi oleh majikan - Samada semestinya fatal - Samada kecacatan boleh disembuhkan oleh siasatan di Mahkamah Perusahaan.*

PERHUBUNGAN PERUSAHAAN: *Pembuangan kerja salah - Pampasan sebagai ganti mengembalikan semula pekerjaan - Salahlaku pekerja - Samada satu faktor relevan bagi menentukan jumlah pampasan - Akta Perhubungan Perusahaan 1967 s. 30(5).*

PERHUBUNGAN PERUSAHAAN: *Mahkamah Perusahaan - Bidangkuasa - Rujukan oleh Menteri - Pembuangan kerja tanpa sebab dan alasan munasabah - Samada Mahkamah terikat kepada terma-terma rujukan - Mahkamah Perusahaan enggan memeriksa merit rujukan atas alasan bahawa ketiadaan siasatan dalaman menjadikan pembuangan kerja ipso facto salah - Samada satu kesilapan bidangkuasa - Akta Perhubungan Perusahaan 1967 s. 20(3) - Akta Pekerjaan 1955 s. 14(1)(a).*

INTERPRETASI: *Akta Pindaan - Perkataan-perkataan am di dalamnya - Samada boleh mengubah dasar undang-undang yang wujud dalam statut yang sama atau pun statut-statut lain - Pindaan kepada s. 14(1)(a) Akta Pekerjaan 1955 - Samada boleh mengubah bidangkuasa dan tugas Mahkamah Perusahaan di bawah s. 20 Akta Perhubungan Perusahaan - Akta Pindaan A91/1971, A360/1976, A497/1980.*

Perayu, yang bertugas sebagai pengurus tuntutan insuran dalam syarikat responden, telah dibuang kerja atas alasan pengabaian tugas yang berat, iaitu, kerana menjual dengan cara yang tidak wajar dua buah kereta rosak milik responden kepada dirinya sendiri. Fakta menunjukkan bahawa siasatan dalaman tidak dibuat oleh responden sebelum membuang perayu.

Ekoran rujukan yang dibuat oleh Menteri dibawah s. 20(3) Akta Perhubungan Perusahaan 1967 (Akta tersebut) bagi menentusahkan keteraturan pembuangan kerja di atas, Mahkamah Perusahaan memutuskan bahawa kegagalan responden mengadakan siasatan dalaman di sini adalah satu pelanggaran keadilan asasi yang jelas dan menyebabkan pembuangan kerja tersebut *ab initio* menjadi salah. Atas alasan ini Mahkamah merasakan tidak perlu baginya untuk menentusah samada pembuangan kerja itu dibuat atas sebab atau alasan yang munasabah ataupun sebaliknya. Mahkamah bagaimanapun mengambil kira salahlaku perayu dan akibatnya hanya mengawadkan jumlah pampasan yang terhad kepada perayu sebagai ganti pengambilan semula.

Kedua-dua pihak, yang tidak berpuas hati dengan awad di atas, memohon kepada Mahkamah Tinggi untuk perintah *certiorari* bagi membatalkan awad tersebut. Kedua-dua permohonan ditolak oleh yang arif Hakim yang memutuskan bahawa Mahkamah Perusahaan dalam halkeadaan di sini tidak melakukan apa-apa kesilapan bidangkuasa. Pihak-pihak tersebut, dengan itu, membuat rayuan lanjut.

Diputuskan:

Oleh Mohd Azmi bin Hj. Kamaruddin HMP (menyampaikan penghakiman Mahkamah):

[1] Dalam menilai pampasan sebagai ganti pengambilan semula ianya adalah teratur bagi Mahkamah Perusahaan untuk mengambil kira perbuatan salahlaku pihak yang menuntut. Amalan sedemikian adalah konsisten dengan peruntukan s. 30(5) Akta tersebut yang mengkehendaki Mahkamah Perusahaan bertindak dengan penuh kesaksamaan dan kehematan. Mahkamah Tinggi adalah betul apabila menolak permohonan perayu untuk membatalkan awad berhubung pampasan terhad tersebut.

[2] Sebaik sahaja suatu kes pembuangan kerja salah dirujuk oleh Menteri dengan teraturnya di bawah s. 20(3), Mahkamah Perusahaan mempunyai bidangkuasa dan berkewajipan di bawah Akta, untuk menyelesaikan pertikaian berkenaan di atas merit, kecualilah rujukan itu sendiri secara *ab initio*nya tidak sah. Mahkamah Perusahaan tidak ada bidangkuasa untuk mengubah skop rujukan tersebut. Oleh yang demikian, walaupun terdapat perlanggaran terhadap tanggungjawab kontraktual atau statutori untuk mengadakan siasatan dalaman, Mahkamah Perusahaan harus meneruskan pemeriksaan dan menentusahkan, pertama, samada salahlaku yang disungutkan itu benar-benar dilakukan, dan jika ya, samada ianya boleh menjadi alasan atau sebab yang munasabah bagi pembuangan kerja.

[3] Mahkamah Perusahaan, apabila mengambil kira persoalan samada berlaku kegagalan mengadakan siasatan dalaman di sini, telah menyiasat satu sebab yang langsung tidak digunakan oleh majikan, sebab yang mana, juga merupakan perkara yang tidak dirangkumi oleh rujukan yang dibuat oleh Menteri. Mahkamah Perusahaan, oleh hal yang demikian, telah mengubah skop rujukan oleh Menteri dan dengan itu telah melakukan kesilapan bidangkuasa.

[4] Kecacatan keadilan asasi oleh responden di sini boleh dan sepatutnya diperbetulkan oleh perbicaraan di Mahkamah Perusahaan. Mahkamah Perusahaan adalah satu badan statutori separa-kehakiman yang mampu membuat keputusan yang adil dan dengan cara yang adil. Walaupun terdapat kecacatan awal oleh responden apabila membuang perayu, perbicaraan di hadapan Mahkamah Perusahaan boleh dianggap sebagai memberikan peluang secukupnya kepada perayu untuk didengar bagi memenuhi syarat keadilan asasi sekaligus memperbetulkan kesilapan tidak mengadakan siasatan dalaman. Tidak ada sebab mengapa Mahkamah Perusahaan harus bersungut bahawa adalah sangat tidak adil baginya untuk meneliti merit persoalan "just cause and excuse".

[5] Prinsip bahawa perlanggaran awal keadilan asasi oleh majikan boleh diperbetulkan oleh Mahkamah Perusahaan terpakai kepada semua kes tidak kira samada yang menuntut adalah seorang pekerja atau pun tidak menurut maksud Akta Pekerjaan. Hak kepada siasatan yang teratur yang diberikan kepada kategori tertentu "employee" oleh s. 14(1) Akta Pekerjaan, tidak mengubah undang-undang mengenai "workmen" di bawah s. 20 Akta Perhubungan Perusahaan. Peruntukan statutori berkenaan, oleh kerana itu, tidak mengecualikan Mahkamah Perusahaan dari tugasnya untuk memeriksa persoalan "just cause or excuse" sebagaimana yang dikehendakki oleh s. 20.

[Rayuan perayu ditolak. Rayuan responden dibenarkan tetapi terhad kepada membatalkan bahagian awad yang memutuskan bahawa kegagalan responden mengadakan siasatan dalaman secara ipso facto menjadikan pembuangan kerja berkenaan tidak dibuat dengan sebab atau alasan yang munasabah]

Cases referred to:
Griffiths (Inspector of Taxes) v. J.P. Harrison (Watford), Ltd. [1962] 1 AER 909 ***(cit)***
Bromley London Borough Council v. Greater London Council and Anor. [1983] 1 AC 768 ***(cit)***
*Dreamland Corporation (M) Sdn. Bhd. v. Choong Chin Sooi & Anor. [1988] 1 MLJ 111****(refd)***
Goon Kweee Phoy v. J.P. Coats [1981] 2 MLJ ***(refd)***
Schmidt v. Secretary of States, Home Affairs [1969] 2 Ch. 149 ***(refd)***
Hotel Malaya Sdn. Bhd. & Anor. v. National Union of Hotel, Bar & Restaurant Workers & Anor. [1982] 2 MLJ 237 ***(refd)***
Cropper v. Smith [1884] 26 Ch.D 700 ***(refd)***
Hochtief Gammon v. Industrial Tribunal [1964] 51 AIR 1746 ***(foll)***
Calvin v. Carr & Ors. [1979] 2 All ER 440 ***(foll)***
Leary v. National Union of Vehicle Builders [1970] 2 AER 713 ***(refd)***
Cinnamo v. British Airports Authority (CA) [1980] 1 WLR 582 ***(refd)***
H. Young & Co. v. The Mayor and Corporation of Royal Leamington SPA (1882-83) 8 AC 517 ***(refd)***
National Assistance Board v. Wilkinson [1952] 2 AER 255 ***(foll)***
Chertsey Urban District Council v. Mixnam's Properties Ltd. [1955] AC 735 ***(foll)***

Legislation referred to:
Employment Act 1955, s. 14(1)
Industrial Relations Act 1967, ss. 20 (3), 29, 30(3)(5)

For the appellant - B. Lobo; M/s. Lobo & Associates
For the respondent - N. Sivabalah; M/s. Shearn Delamore & Co.

JUDGMENT

Mohd Azmi bin Hj. Kamaruddin FCJ:

On a reference by the Minister under s. 20 (3) of the Industrial Relations Act 1967, the Industrial Court by its Award No. 305/90 dated 15 November 1990 found Wong Yuen Hock, an insurance claims manager of twelve years standing in the employment of Hong Leong Assurance Sdn. Bhd. had been dismissed without just cause or excuse on the sole ground

of the failure of the employer to hold a domestic inquiry as required under the terms of Wong's contract of employment. In lieu of reinstatement the Court had awarded him compensation but the quantum was limited to one year's salary, totalling RM43,200 by reason of his contributory act of misconduct. By separate originating motion, both the employer and employee applied to have the award quashed by *certiorari*. Hong Leong was aggrieved by the whole award, whilst Wong was dissatisfied with that part of the award which had reduced the compensation to one year's salary. The two related appeals arose from the decision of Abu Mansor, in dismissing both the applications. At both Counsels' request, we agreed to hear Wong's appeal first. After hearing submissions, we upheld the learned Judge's order of dismissal of Wong's application for *certiorari* to quash the reduced award of compensation as we were not persuaded that the Industrial Court had exceeded or was acting without jurisdiction in finding Wong's involvement in the surreptitious way in which two motor wrecks had been sold. Nor could we accept the argument that such serious irregularities in the sales could not constitute gross dereliction of duties in the motor insurance business. In exercising judicial review, the High Court was obliged not to interfere with the findings of the Industrial Court unless they were found to be unreasonable, in the sense that no reasonable man or body of men could reasonably come to the conclusion that it did, or that the decisions of the Industrial Court looked at objectively, are so devoid of any plausible justification that no reasonable person or body of persons could have reached them (see Lord Denning's judgment in *Griffiths (Inspector of Taxes) v. J.P. Harrison (Watford), Ltd.* [1962] 1 AER 909 at 916, and judgment of Lord Diplock in *Bromley London Borough Council v. Greater London Council and Anor.* [1983] 1 AC 768 at 821).

In the result we were obliged to dismiss Wong's appeal against the High Court's refusal to quash the reduced award. We only needed to add that in assessing compensation in lieu of reinstatement, it was the practice of the Industrial Court (so we were told) to take into consideration any contributory misconduct of the claimant. We were of the opinion that such practice was perfectly justified in appropriate cases so that the employee's own misdemeanour or unsatisfactory conduct might be taken as contributory factor towards the assessment of compensation for the wrongful dismissal. In our view such practice was not only consistent with the provision of s. 30(5) of the Industrial Relations Act, which requires the Industrial Court to act according to equity and good conscience when making its awards, but would also discourage unfair trade practice by motor insurance executives whereby a repairable insured car could be readily condemned as wreck for the benefit of the interested party to the detriment of insurance companies.

Dealing now with Hong Leong's appeal against the principal award of wrongful dismissal, it is convenient to reproduce below the facts of the case as summarised by the Industrial Court award:

> The claimant Wong Yuen Hock, was dismissed by his employer Hong Leong Assurance Sdn. Bhd. ("the company") with effect from 5 July 1986. He was claims manager at the material time drawing a basic salary of RM3,600 a month.
>
> The claimant's downfall began when a luxurious Mercedez Benz JAX 866 insured with the company was wrecked in an accident. Rumours were floating around that the claimant had purchased this wreck without the knowledge of the company; the initial sale to Foo Chin Chow Workshop being a mere conduit pipe through which the wreck passed into his hands. The company began investigations. The company then discovered that there were also irregularities in the sale of another Porsche wreck BBJ 925. It was an unwritten rule of the company that staff are prohibited from purchasing wrecks. The claimant was sacked ignominiously without as much as eliciting an explanation from him or affording him the right

to be heard in a domestic inquiry, this being one of the terms and conditions of his contract of employment.

The claimant's career with the company having foundered on these two wrecks **he has sought the aid of this Court to be reinstated on the ground that his dismissal was without just cause or excuse.**

The narrative of the company's case began with the evidence of Adrian Loh Heong Chow (CW1) the general manager of the company. He said that the claimant had committed serious irregularities in respect of the sale of these two wrecks and the company could no longer repose any trust or confidence in him. The company contends that the claimant's suspicious, surreptitious involvement in the sale of the two wrecks was a gross dereliction of his duties. (Emphasis supplied)

The Industrial Court award tabulated seven separate bodies of evidence which amply demonstrated Wong's involvement in the purchase of the Mercedes Benz wreck, *viz*:

1. The written offer of RM25,000 made by Foo Chin Chow Workshop for the purchase of the Mercedes wreck JAX 866 was in Wong's handwriting. He admitted this.
2. The payment of RM25,000 was delayed for eight and a half months which was again abnormal and irregular by reason of Wong's involvement in the purchase.
3. Wong purchased spare parts for the Mercedez Benz.
4. Wong proceeded to change the Registration number of the wreck from JAX 866 to WBD 8082.
5. Wong was seen driving this car.
6. Wong was one of the two named drivers in the insurance proposal form.
7. The Mercedes Benz, now WBD 8082, was parked in Wong's house.

On the sale of the Porsche wreck, the Industrial Court accepted evidence adduced on behalf of Hong Leong, that Wong was indeed involved in the sale of the wreck. The Court rejected Wong's denial as it found that Wong's evidence "was stained with lies". It was the Court's conclusion that the company had on the evidence established and proved on a balance of probabilities that Wong had committed irregularities in the sale of the two wrecks which was a gross dereliction of his duties, sufficient to constitute contributory conduct in assessing compensation in lieu of reinstatement.

It is important to observe that having found that Wong did commit the alleged misconduct, the view taken by the Industrial Court was that, Wong's gross dereliction of duties against the unwritten rule of the company was relevant only in so far as providing the grounds for the reduced compensation. The Industrial Court, however, omitted to consider the question of whether the proven misconduct could constitute sufficient cause or excuse for Wong's dismissal, as it was obviously preoccupied with the issue of jurisdiction brought about by the procedural breach of natural justice on the part of Hong Leong in failing to give Wong a predismissal opportunity to be heard in a domestic inquiry. Thus, without going into the actual merit of the case, as to whether there was just cause or excuse for the dismissal, the Industrial Court concluded that Wong's dismissal was wrongful purely on ground of the procedural breach. It was never in dispute that Hong Leong had failed to hold a proper domestic inquiry as required by Wong's contract of employment. At page 10 of the Award, the Industrial Court held:

> The practice of terminating a workman's employment by simply invoking a contractual provision of termination by notice without offering a reason for the dismissal at the time of termination and without affording the workman a reasonable opportunity of being heard is repugnant to principles of industrial jurisprudence. The nondisclosure of the reasons for terminating a workman's employment is unfair as a workman's case may not be referred to the Industrial Court and he may never know the precise reason for his dismissal.

Further, at page 20 of the award, the Industrial Court said:

> Bearing in mind the words of His Lordship Justice Raja Azlan Shah C.J. *in Goon Kwee Phoy v. J.P. Coats* [1981] 2 MLJ that in our view s. 20, "is deliberately couched in subjective terms" and the general legislative purpose of the Act, this Court is of the opinion that in every contract of employment there is an implied obligation on the employer to afford a workman a reasonable opportunity of being heard before he is dismissed. Failure to do so will render the dismissal procedurally unfair as every workman has a legitimate expectation that he would not be dismissed without hearing what he has to say. (*Schmidt v. Secretary of State, Home Affairs* [1969] 2 ch.149).
>
> Notwithstanding the irregularities committed by the claimant the failure of the company to afford the claimant a reasonable opportunity of being heard before terminating his dismissal is procedurally unfair and the dismissal of the claimant, a dismissal without just cause and excuse. Further, failure of the company to institute an inquiry as provided by the terms and conditions of employment is a breach of contract and an unfair labour practice which also renders the dismissal of the claimant without just cause or excuse.

In this appeal, it was never in dispute that in whatever internal inquiry conducted by the management, Wong was never given an opportunity to be heard, which was in breach of clause L2 para 3 of the terms and conditions of Wong's appointment as an executive which *inter alia* required:

> Every company should hold an inquiry to determine disciplinary action against any staff. The staff concerned should be asked to give an explanation.

Relying purely on the absence of a proper domestic inquiry, the Industrial Court would seem to conclude that the breach of natural justice without further ado rendered Wong's dismissal without just cause or excuse. At page 13 of the Award, the Industrial Court stated:

> Counsel for the claimant relied on the case of *Workmen of the Motipur Sugar Factory Private Limited v. Motipur Sugar Factory Private Limited* AIR 1965, a decision of the Supreme Court of India cited with approval by the Supreme Court of Malaysia in the *Dreamland* case. In the *Motipur* case no inquiry was held as required by the Industrial Employment [Standing Order's Act 1946] before discharging 119 workmen. Wanchoo J stated:
>
> > Where an employer has failed to make an inquiry before dismissing or discharging a workman it is open to him to justify his action before the Tribunal by leading all relevant evidence before it. The entire matter would be open before the tribunal. It will have jurisdiction not only to go into the limited question open to a Tribunal where domestic inquiry has been properly held, but also to satisfy itself on the facts adduced before it by the employer whether the dismissal or discharge was justified. The important effect or omission to hold an inquiry is merely that the Tribunal would not have to consider only whether there was a *prima facie* case but would decide for itself on the evidence adduced whether the charges have really been made out.

The Supreme Court of Malaysia in the *Dreamland* case said:

> We have already considered the relevant passage in *Motipur's* case and do not propose to say anything more beyond saying that it is in accord with our views of the law in the instant appeal.

In the *Motipur* case Wanchoo J said:

> If the inquiry is defective or if no inquiry has been held as required by the standing orders the entire case would be open before the tribunal and the employer would have to justify on facts as well that its order of dismissal or discharge was proper.

The Industrial Court sought to distinguish the facts in *Dreamland Corporation (M) Sdn. Bhd. v. Choong Chin Sooi & Anor*. [1988] 1 MLJ 111 with the present case in this way:

> The *Dreamland* case with respect should however not be used with impunity as a licence to dismiss a workman without giving the workman a reasonable opportunity of being heard. Considering that not every representation that a workman is dismissed without just cause or excuse under s. 20 of the Act is referred to the Industrial Court for adjudication, the need for an inquiry before dismissal assumes greater importance because only cases that are in fact referred to the Industrial Court receive the benefit of a full hearing envisaged in the *Dreamland* case. A significant fact to bear in mind is that s. 14(1) of the Employment Act, 1955 stipulates a 'due inquiry' before dismissal of an employee for misconduct and this Court has consistently held that a breach of this inquiry provision renders the dismissal void.

In an apparent disagreement with the principle enunciated by Wan Sulaiman FJ in *Dreamland*, the Industrial Court at page 12 of the award complained that it was for the employer "to carry out and fulfil the contractual obligation of the company to hold the required inquiry", and it was "grossly unfair" to ask the Industrial Court to carry out this function.

In our view, it is important to distinguish between settlement of disputes under the Industrial Relations Act, and ordinary master and servant disputes under the Employment Act 1955 and the common law. It is important to remind ourselves once again that as provided by the 1967 Act itself, the Industrial Relations Act is:

> to provide for the regulation of the relations between employers and workmen and their trade unions and the prevention and settlement of any differences or disputes arising from their relationship and generally to deal with trade disputes and matters arising therefrom.

In the settlement of any difference or disputes between employers and workmen, the wide powers given to the Industrial Court under s. 29 include, "the expeditious determination of the matter before it" [sub-section (g)], and again s. 30(3) provides:

> The Court shall make its award without delay and where practicable within thirty days from the date of reference to it of the trade dispute or of a reference to it under s. 20(3).

To avoid the Industrial Court from being bogged down in extraneous matters and the niceties of the law s. 30(5) also provides:

> The Court shall act according to equity, good conscience and substantial merits of the case without regard to technicalities and legal form.

It is therefore essential that when a reference is made under s. 20(3), the paramount function of the Industrial Court is to deal with "the substantial merits of the case, without regard to technicalities and legal form", in addition to determining the dispute with a sense of urgency.

We did not share the view that *Goon Kwee Phoy* and *Schmidt* were the authorities for the proposition that the Industrial Court's function ended under s. 20 reference once a procedural breach of natural justice had been established. The threshold jurisdiction of the Industrial Court is conferred by the Minister's reference under s. 20 of the Industrial Relations Act 1967. Now, what is the function of the Industrial Court when hearing such a reference? In *Goon Kwee Phoy,* (a case referred to by the Industrial Court) Raja Azlan Shah CJ(M) speaking for the Federal Court held:

> We do not see any material difference between a termination of the contract of employment by the notice and a unilateral dismissal of a summary nature. The effect is the same and the result must be the same. Where representations are made and are referred to the Industrial Court for enquiry, **it is the duty of that Court to determine whether the termination or dismissal is with or without just cause or excuse**. If the employer chooses to give a reason for the action taken by him, the duty of the Industrial Court will be to enquire whether that excuse or reason has or has not been made out. If it finds as a fact that it has not been proved, then the inevitable conclusion must be that the termination or dismissal was without just cause or excuse. **The proper enquiry of the Court is the reason advanced by it and that Court or the High Court cannot go into another reason not relied on by the employer or find one for it.** (Emphasis supplied)

Again in *Hotel Malaya Sdn. Bhd. & Anor. v. National Union of Hotel, Bar & Restaurant Workers & Anor.* [1982] 2 MLJ 237 at 240 the same learned Chief Justice had this to say on the function of the Industrial Court:

> It exercises a quasi-judicial function. It gives a full reasoned judgment in the nature of an award (s. 30). Its functions comprise an investigation of the facts, an analysis of the facts, findings of facts, and lastly, the application of the law to those findings.

In *Cropper v. Smith* [1884] 26 Ch.D 700 at 710-711, Bowan, LJ had this to say:

> ... it is a well established principle that the object of Courts is to decide the rights of the parties, and not to punish them for mistakes they make in the conduct of their cases by deciding otherwise than in accordance with their rights

Further, in *Hochtief Gammon v. Industrial Tribunal* [1964] 51 AIR 1746 at 1749, Gajendragadkar CJ speaking in the Supreme Court held:

> In dealing with this question, it is necessary to bear in mind one essential fact, and that is that the Industrial Tribunal is a tribunal of limited jurisdiction. Its jurisdiction is to try an industrial dispute referred to it for its adjudication by the appropriate Government by an order of reference passed under s. 10. It is not open to the tribunal to travel materially beyond the terms of reference, for it is well settled that the terms of reference determine the scope of its power and jurisdiction from case to case.

On the authorities, we were of the view that the main and only function of the Industrial Court in dealing with a reference under s. 20 of the Act (unless otherwise lawfully provided by the terms of the reference) is to determine whether the misconduct or irregularities complained of by the management as the grounds of dismissal were in fact committed by the workman, and if so, whether such grounds constitute just cause or excuse for the dismissal. In our opinion, there was no jurisdiction by the Industrial Court to change the scope of reference by substituting its own reason. In this particular case, it was clear from the award of the Industrial Court, that the reason given by Hong Leong for the dismissal of Wong was based on the irregularities in the sale of the two motor car wrecks which the Industrial Court held to be a gross dereliction of Wong's duties. After being satisfied that Wong did commit the acts complained of, the Industrial Court ought to have gone further and determined whether such gross dereliction of duties constituted just cause or excuse for the dismissal. Instead of determining the second issue, the Industrial Court would appear to have changed the scope of the reference by inquiring almost entirely on the question of whether there was a failure to hold a domestic inquiry, a reason not relied upon by the employer for the dismissal, and a matter quite outside the terms of reference by the Minister.

Thus, under s. 20, it is incumbent for the Industrial Court to inquire into the issue of just cause or excuse on the merits, save perhaps when the reference itself by the Minister was challenged and held to be bad in law so as to deprive the Court of threshold jurisdiction. In

this particular case, there was no challenge on the threshold jurisdiction and as such, the failure to discharge its function under s. 20 reference was a jurisdictional error meriting interference by *certiorari*.

In *Calvin v. Carr and Others* [1979] 2 AER 440, two fundamental issues were dealt by the Privy Council regarding the decision of the steward inquiry which disqualified Mr. Calvin as a jockey for one year, and the subsequent dismissal of his appeal by the Jockey Club Appeal Committee pursuant to the Australian Jockey Club Act 1873. Mr. Calvin's argument was grounded on the fact that his purported disqualification by the stewards and the dismissal of his appeal were void on the grounds *inter alia*, that the stewards had in the first instance failed to observe the rules of natural justice or fairness and their decision was therefore invalid, and that accordingly the appeal committee had no jurisdiction to hear and determine the appeal from it. In rejecting both arguments and dismissing the appeal the Privy Council, speaking through Lord Wilberforce after thoroughly examining its own decisions on the matter in Australia, Canada, England and New Zealand, held:

> (1) A decision of an administrative or domestic tribunal reached in breach of natural justice was void rather than voidable, but until declared to be void by a competent body or court it was capable of having some effect or existence in law and could not be considered as being legally non-existent. Assuming the steward's decision to be void, it was nevertheless a decision for the purposes of an appeal to the committee, which therefore had jurisdiction to entertain the appeal.
>
> (2) There was no absolute rule that defects in natural justice at an original hearing could or could not be cured by appeal proceedings which had been correctly and fairly conducted. However, where a person had joined an organisation or body and was deemed, on the rules of that organisation and the contractual context in which he joined, to have agreed to accept what in the end was a fair decision, notwithstanding some initial defect, the task of the Courts was to decide, in the light of the agreements made and having regard to the course of the proceedings, whether at the end of those proceedings there had been a fair result reached by fair methods. On the facts, those who took part in racing were deemed to have accepted the rules of racing and to be bound by the decisions of bodies set up under the rules, provided they received fair treatment and a consideration of their case on its merits. The appellant's case had received, overall, full and fair consideration and there was therefore no basis on which the court ought to interfere.

In the appeal before us, apart from the crucial question of whether the Industrial Court.was a competent body to declare the dismissal null and void, our main concern was with the second decision in *Calvin* on whether the defect in natural justice by Hong Leong could or could not be cured by the inquiry in the Industrial Court.

In dealing with the second issue, the authorities seem to show that there are two categories of cases at each end of the spectrum with a third category occupying in between. The first involves cases where the rules provide for re-hearing by the original body or some fuller or enlarged form of it, for example, rules and regulations of social clubs, where the first hearing is superseded by the second body. The second category is where the complainant has the right to nothing less than a fair hearing both at the original and at the appellate stage.

Having regard to the objectives of the Industrial Relations Act, we did not see why the reference under s. 20 by the Minister in dismissal cases could not be considered as falling under the third or intermediate category, albeit closer to the first category as a re-hearing of the dispute. As stated by Lord Wilberforce in *Calvin* at page 447:

> ..... no clear and absolute rule can be laid down on the question whether defects in natural justice appearing at an original hearing, whether administrative or quasi-judicial, can be 'cured' through appeal proceedings".

It is true that in *Leary v. National Union of Vehicle Builders* [1970] 2 AER 713 at 720, Megarry J was of the following opinion:

> If the rules and the law combine to give the member the right to a fair trial and the right of appeal, why should he be told that he ought to be satisfied with an unjust trial and a fair appeal? .... As a general rule .... I hold that a failure of natural justice in the trial body cannot be cured by a sufficiency of natural justice in an appellate body.

But in disagreeing with the above statement, as being too broadly stated, Lord Wilberforce in *Calvin* held at page 448:

> .... It affirms a principle which may be found correct in a category of cases; these may very well include trade union cases, where movement solidarity and dislike of the rebel, or renegade, may make it difficult for appeals to be conducted in an atmosphere of detached impartiality and so make a fair trial at the first (probably branch) level an essential condition of justice. But to seek to apply it generally overlooks, in their Lordships' respectful opinion, both the existence of the first category, and the possibility that, intermediately, the conclusion to be reached, on the rules and on the contractual context, is that those who have joined in an organisation, or contract, should be taken to have agreed to accept what in the end is a fair decision, notwithstanding some initial defect.

We were of the view, that for the subsequent body to be able to "cure" the original defect in natural justice, it is essential that the subsequent body is an impartial body and free from partiality, capable of arriving at a fair decision. Unlike, for instance in the case of Trade Union Appeal Committees, the Industrial Court, is clearly an independent quasi-judicial statutory body capable of reaching fair result by fair method, notwithstanding some initial defect by Hong Leong in dismissing the appellant. The Industrial Court proceeding dealing with dismissal cases by management under s. 20 should therefore, in our opinion be categorised under the "intermediate category" of cases referred to in *Calvin*, wherein the Industrial Court should be capable of curing any procedural defect in natural justice at the management stage of the dismissal dispute.

In our opinion *Dreamland* did not belittle the importance of complying with any statutory or contractual enquiry before dismissal in all master and servant cases outside the purview of the Industrial Relations Act. What *Dreamland*, following the curable principle in *Motipur* and *Calvin* laid down was that failure on the part of the employer to hold a proper domestic inquiry should not deprive the Industrial Court of jurisdiction, nor excuse it from the obligation to hear the reference on its merits. We therefore could not find any reason to reject the two authorities. In any event, we held the view that once a case of wrongful dismissal had been properly referred by the Minister under s. 20(3), the Industrial Court was seised with jurisdiction and was obliged under the Act to determine the dispute on its merits. Thus, even where there was a breach of contractual or statutory obligation to hold an inquiry, the Industrial Court should proceed to determine on the merits firstly, whether the misconduct complained of was in fact committed by the employee, and secondly whether the nature and extent of the misconduct could constitute just cause or excuse for the dismissal.

Invariably, the hearing before the Industrial Court itself which indeed provides a better and impartial forum for the employee than most domestic tribunals, should be taken as sufficient opportunity for the employee to being heard to satisfy natural justice and thereby rectify any omission to hold any domestic inquiry. Indeed, the Minister's reference should be viewed as a hearing *de novo* by an independant statutory tribunal. In our view this was a far cry from saying that a statutory or contractual requirement for a predismissal inquiry could be totally ignored in all disputes involving master and servant, even though outside the parameter

of s. 20. In the circumstances we failed to understand the complaint of the Industrial Court that for it to inquire into the merits the question of "just cause or excuse" would be "grossly unfair". Carrying out one's function could not possibly be described as an unfair exercise.

Apart from the fact that the Industrial Court, being neither a superior Court nor a Court of record, had no power to declare any act null and void, it might be useful to note that a breach of natural justice might mean nothing if the failure complained of would not result in prejudice to the complainant or would have availed him nothing. Thus, in *Cinnamo v. British Airports Authority (CA)* [1980] 1 WLR 582 at 593 though not a case of dismissal, six car-hire drivers were banned by the British Airports Authority from entering Heathrow Airport London, without giving them an opportunity to be heard. In dismissing the appeal of the car-hire drivers, Brandon, LJ had this to say at 593:

> The third question which was argued before us was that of natural justice. So far as that is concerned, I agree with what has been said by Lord Denning MR and Shaw LJ. I do not think that in the circumstances of this case there was any need to give these minicab drivers an opportunity to make representations to the authority before they issued the ban. The reason for the ban must have been well known when the letters were received. Any representations which were desired to be made could have been made immediately by letter. None were. The truth is that no representations other than representations which included satisfactory undertakings about future behaviour would have been of the slightest use.
>
> If I am wrong in thinking that some opportunity should have been given, then it seems to me that no prejudice was suffered by the minicab drivers as a result of not being given that oportunity. It is quite evident that they were not prepared then, and are not even prepared now, to give any satisfactory undertakings about their future conduct. Only if they were would representations be of any use. I would rely on what was said in *Malloch v. Aberdeen Corporation* [1971] 1 WLR 1578, first per Lord Reid p. 1582 and secondly per Lord Wilberforce at p. 1595. The effect of what Lord Wilberforce said is that no one can complain of not being given an opportunity to make representations if such an opportunity would have availed him nothing.

As indicated earlier, being a creature of statute, the Industrial Court could not decline jurisdiction conferred on it by the Minister's reference under s. 20(3) unless the reference itself could be held to be void *ab initio*, resulting in lack of threshold jurisdiction on the part of the Industrial Court. Apart from that, the Industrial Court was clearly under a duty to determine the dismissal dispute on its merits. In our opinion the effect of any breach of natural justice should benefit the workman and not the party in breach. Thus, where on the merits, the workman had clearly been dismissed with just cause or excuse, and natural justice had been sufficiently complied with by the Industrial Court, what real benefit would there be for him to be told that because of failure to hold a domestic inquiry, he had to go back and face an unhappy management, who as a matter of course, could remedy the procedural breach and dismiss him for the second time? We failed to see how such delay and duplicity of proceedings could be interpreted as contributing towards industrial peace and harmony, compared to the result achieved by *Dreamland*. As stated in *Motipur* case:

> In principle there is no difference whether the matter comes before the Tribunal for approval under s. 33 or on a reference under s. 10. In either case if the enquiry is defective or if no enquiry has been held as required by standing orders, the employer would have to justify on facts as well that its order of dismissal or discharge was proper. A defective enquiry stands on the same footing as no enquiry. If the dismissal be set aside by the Industrial Tribunal only on the ground that the employer has dismissed his employee without holding an enquiry it would inevitably mean that the employer will immediately proceed to hold the enquiry and pass an order dismissing the employee once again. In this event, another industrial dispute

would arise and the employer would be entitled to rely upon the enquiry which he had held in the meantime. This would mean delay and on the second occasion it will entitle the employer to claim the benefit of the domestic enquiry.

In dismissing Hong Leong application for *certiorari* to quash the principal award of the Industrial Court, Abu Mansor J adopted the entire reasoning of the Chairman and thus fell into similar error by stating:

> The Court makes a finding, after perusing the whole of the award, that by not adhering to the terms of claimant's contract of employment, there was flagrant breach of it by the employer by not having held an inquiry before his dismissal. The Industrial Court held on authorities that the decision to dismiss claimant was unfair on the contractual context, since he was not duly heard before his dismissal. The Industrial Court held that the failure to hold an inquiry is no mere technicality. This Court can find no fault with the learned Chairman's award when he found for the claimant that the failure of the company to institute an inquiry as provided under the terms and conditions of employment is a breach of contract and an unfair labour practice which renders the dismissal of the claimant without just cause or excuse. The Industrial Court then went on to decide reducing the compensation he awarded. I have already dealt with this aspect of the Industrial Court judgment and said I am in full agreement.

It was therefore the function of the Industrial Court in this particular case to determine on the available evidence whether Wong had misconducted himself by his involvement in the sales of the two motor car wrecks against the unwritten rules of Hong Leong which prohibited its staff from such activity. Since the answer was in the positive, the next question for the Court to ask itself was whether such misconduct constituted a just cause or just excuse for the dismissal? It was not within the ambit of the reference for the Industrial Court to determine whether Hong Leong ought to be punished for failing to hold a domestic inquiry. The Industrial Court was not competent to declare the dismissal void for failure to comply with the rule of natural justice. The very purpose of the inquiry before the Industrial Court was to give both parties to the dispute an opportunity to be heard irrespective of whether there was a need for the employer to hold a contractual or statutory inquiry. We were confident that the Industrial Court as constituted at present was capable of arriving at fair result by fair means on all matters referred to it. If therefore there had been a procedural breach on natural justice committed by the employer at the initial stage, there was no reason why it could not be cured at the re-hearing by the Industrial Court.

The distinction sought to be made by the Industrial Court between *Dreamland* and the present case was founded on s. 14(1) of the Employment Act 1955 which expressly required an inquiry before dismissal be conducted for employees whose monthly wage did not exceed RM1,250. Under the "termination of contract for special reasons", the original s. 14(1) provided that "An employer may terminate the contract of service of a labourer without notice on grounds of such labourer's misconduct." The requirement of "due inquiry" by the employer for such dismissal without notice was first introduced by Parliament on 1 October 1971 *vide.* Amendment Act A91/1971. The said requirement has been preserved, by subsequent amendments to s. 14 *vide* Act A 360/1976 and Act A 497/1980. The present s. 14(l)(a) provides:

> An employer may, on the grounds of misconduct inconsistent with the fulfilment of the express or implied conditions of service, after due inquiry dismiss without notice the employee.

The term "employee" is presently defined by s. 2(1) *vide* Act A 360/1976 to mean:

> Any person or class of persons:
>
> (a) included in any category in the first schedule to the extent specified therein; or
>
> (b) in respect of whom the Minister makes an order under subsections (3) or s. 2A

The first category of "employee" in paragraph 2(1) of the first schedule to the Act as amended by Act 716 w.e.f. 10 February 1989 reads:

> Any person, irrespective of his occupation who has entered into a contract of service with an employer under which such person's wages do not exceed one thousand two hundred and fifty.

In our view the principle that an initial breach of natural justice by the employer could be cured by the Industrial Court inquiry, should not be grounded on whether the claimant was or was not an employee within the meaning of the Employment Act. The curable principle must apply to all cases and must not depend on the salary of a workman. It would be intolerable to conclude that the defect was curable only where the employee earned more that RM1,250 per month.

On the issue of principle of construction to be applied on the application and effect of the words "due inquiry" in the amended s. 14(1) of the Employment Act, it is useful to refer to the principle laid down by the House of Lords in *H. Young & Co. v. The Mayor and Corporation of Royal Leamington SPA* (1882-83) 8 App. Cas at 526. In that case Lord Blackburd said:

> We ought in general, in construing an Act of Parliament, to assume that the legislature knows the existing state of the law...

Further, in *National Assistance Board v. Wilkinson* [1952] 2 AER 255 at 259, which was quoted with approval by Lords Reid in the House of Lord in *Chertsey Urban District Council v. Mixnam's Properties Ltd.* [1965] AC 735 at 751, Lord Goddard had this to say:

> ... but it may be presumed that the legislature does not intend to make a substantial alteration in the law beyond what it expressly declares. In *Minet v. Leman***,** [1855] 20 Beav. 278 Sir John Romilly. M.R. stated as a principle of contruction which could not be disputed that:
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> ... the general words of the Act are not be construed as to alter the previous policy of the law unless no sense or meaning can be applied to those words consistently with the intention of preserving the existing policy untouched '.

Applying these principles of interpretation, we did not agree that Parliament, by introducing the right to an inquiry for certain category of ‘employees’ in s. 14 (1) (a) of the Employment Act, had intended to alter the policy of the law affecting 'workmen' under s. 20 of the Industrial Relations Act, unless specifically provided or made abundantly clear by the amending statutes. As such we did not consider favourably the argument that the jurisdiction and function of the Industrial Court under s. 20 reference had been or could be drastically changed by inference, by reason of the amendments to s. 14(l) of the Employment Act 1955 by amending Acts A 91/1971, A 360/1976 and A 497/1980. Parliament must be presumed to know the provisions of the industrial relations legislation when the said amending Acts were legislated in 1971, 1976 and 1980.

In our opinion, it should be presumed that the legislature by amending s. 14(1) of the Employment Act, did not intend to make any alteration in the existing law as contained in s. 20 of the Industrial Relations Act. General words of a particular amending Act of Parliament are not to be construed as to alter the existing policy of the law under the statute; much less the policy of the law under a completely different statute. The statutory requirement of “due inquiry” under s. 14(l)(a) of the Employment Act in the absence of clear intention by Parliament could not in any way excuse the Industrial Court from discharging its duty to enquire into the question of "just cause or excuse" as required by s. 20. notwithstanding the initial failure to hold a proper domestic inquiry.

For reasons already stated, we were of the view that the High Court ought to conclude that the Industrial Court had omitted to consider all relevant matters and committed jurisdictional error in its award when it held that Wong was dismissed without just cause or excuse purely on the basis of failure to hold a domestic inquiry. The omission to consider on the merits whether Wong 's dismissal was with or without just cause or, regardless of the initial breach to hold a domestic inquiry, was fatal. Hong Leong's appeal was accordingly allowed but limited only to quashing that part of the award which held that the failure of Hong Leong to hold an inquiry *ipso facto* rendered Wong 's dismissal without just cause or excuse. To avoid further delay in the disposal of this case, there appeared to be hardly any reason to quash the other parts of the award regarding compensation in lieu of reinstatement. Wong himself in his own appeal had merely complained against the quantum of compensation which we had earlier dismissed.

We ordered that the costs both here and below be awarded to the appellant and the deposit be refunded.